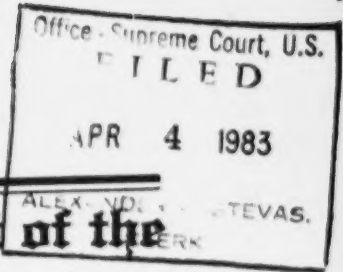


82 - 2020

No.



**In the Supreme Court of the
United States**

October Term, 1982

ALYCE HOVSEPIAN, A/K/A ALYCE
HOVSEPIAN HUGHES, Pro Se,
Petitioner,
v.

GEORGE F. NEFF, INDEPENDENT EXECUTOR
OF THE ESTATE OF ANNETTE GANO
LUMMIS AND NORTON BOND, EXECUTOR
OF THE ESTATE OF RUSH HUGHES,
Respondents

**PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF
TEXAS**

ALYCE HOVSEPIAN
A/K/A ALYCE HOVSEPIAN HUGHES,
Pro Se

34 South North Carolina Avenue
Atlantic City, New Jersey 08401
Phone: (609) 344-4405
(201) 461-2521

QUESTIONS PRESENTED

Was the Supreme Court of Texas correct when it refused Petitioner's application for a writ of error and overruled Petitioner's motion for a rehearing, whereby it agreed with the opinion dated August 12, 1982 of the Court of Appeals, 14th Supreme Judicial District, Houston, Texas, wherein the court ignored the following errors: (1) the court below had no jurisdiction in the proceedings due to defective service in violation of Petitioner's right to due process; (2) the conduct of the court below, during the July 13, 1981 hearing, violated the Petitioner's right to due process; (3) a motion for summary judgment should not be granted before an answer?

Was the Supreme Court of Texas correct when it agreed with the Court of Appeals, Houston, Texas, when it ruled unfavorably against the Petitioner with respect to notice of the date of the hearing, and in a similar circumstance, ruled favorably, as in the case cited further herein?

LIST OF PARTIES INVOLVED

Pursuant to the Rules of this Court the following were parties in the court whose judgment is sought to be reviewed:

Alyce Hovsepian, a/k/a Alyce Hovsepian
Hughes

George F. Neff, Independent Executor of the
Estate of Annette Gano Lummis

Norton Bond, Executor of the Estate of Rush
Hughes

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CASE:

Gulf Refining Company v. A. F. G. Management 34 Limited et al., 605 S.W.2d 346 (Texas Court of Civil Appeal, 14th District, Houston, Texas, dated August 6, 1980, reversed and remanded, rehearing denied September 10, 1980)	7
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UNITED STATES CONSTITUTIONAL AMENDMENTS:

U.S.C.A. I	3, 6
U.S.C.A. V	3, 6
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Opinion Below

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

No.

ALYCE HOVSEPIAN, A/K/A ALYCE HOVSEPIAN
HUGHES,

Pro Se,

Petitioner,

v.

GEORGE F. NEFF, INDEPENDENT EXECUTOR OF
THE ESTATE OF ANNETTE GANO LUMMIS AND
NORTON BOND, EXECUTOR OF THE ESTATE OF
RUSH HUGHES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF TEXAS

OPINION BELOW

The Supreme Court of Texas refused Petitioner's application for a writ of error on December 15, 1982 and overruled Petitioner's motion for a rehearing on January 5, 1983. On January 13, 1983 the Court of Appeals, 14th Supreme Judicial District, Houston, Texas issued its mandate, which was filed February 7, 1983 in the Harris County, Texas Probate files, after which date it was available for the Petitioner to request a copy. Copies of these documents are attached in the Petitioner's appendix.

JURISDICTION

The jurisdiction of this Court is invoked under Section 1257, Chapter 81, Supreme Court (Part IV—Jurisdiction and Venue), (Federal Rules of Civil Procedure, p. 413, West's), Title 28, U. S. C. 1257.

The Court of Civil Appeals, 14th Supreme Judicial District, Houston, Texas, filed its opinion on August 12, 1982 and refused a rehearing, affirming an order of the Harris County, Texas Probate Court Number Two, granting two separate motions for summary judgment against Petitioner, Alyce Hovsepian, a/k/a Alyce Hovsepian Hughes in the matter of the estate of Howard R. Hughes, Jr., deceased dated July 23, 1981 and August 19, 1981. Copies of the opinion and judgments are attached in the Petitioner's appendix.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Texas Rules of Civil Procedure, Rule 166-A:

“(a) A party . . . may, at any time after the adverse party has appeared or answered, move . . . for a summary judgment.”

“(c) The motion . . . shall be filed and served at least twenty-one days before the time specified for the hearing.”

Statutes and Constitutional Provisions

United States Constitution, Amendment I:

“ . . . no law . . . abridging the freedom of speech. . . . ”

United States Constitution, Amendment V:

“ . . . nor . . . compelled . . . to be a witness against himself, nor be deprived of . . . property, without due process of law. . . . ”

United States Constitution, Amendment VI:

“ . . . and to have the Assistance of Counsel for his defense. ”

United States Constitution, Amendment VII:

“ . . . the right of a trial by jury shall be preserved. . . . ”

United States Constitution, Amendment XIV:

“ No State shall . . . abridge the privileges or immunities of citizens . . . or . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. ”

*Statement of the Case***STATEMENT OF THE CASE**

On July 13, 1981 a motion for summary judgment was heard against Alyce Hovsepian, a/k/a Alyce Hovsepian Hughes in the proceedings to declare heirship in the matter of the Estate of Howard Robard Hughes, Jr., deceased in the Probate Court Number Two, in Houston, Harris County, Texas. Two judgments were issued, one dated July 23, 1981 and a second dated August 19, 1981, dismissing the claim of heirship of Alyce Hovsepian, a/k/a Alyce Hovsepian Hughes.

On August 12, 1982 the opinion of the Court of Appeals 14th Supreme Judicial District, affirmed the judgment of the trial court. On October 7, 1982 it overruled the Petitioner's motion for rehearing.

The Supreme Court of Texas refused Petitioner's application for a writ of error on December 15, 1982 and overruled Petitioner's motion for a rehearing on January 5, 1983. On January 13, 1983 The Court of Appeals issued a mandate which was filed in the Harris County, Texas, Probate files on February 7, 1983.

Parties Involved

Petitioner, Alyce Hovsepian, Pro Se, filed claims in 1976, in Wilmington, Delaware; Houston, Texas; Las Vegas, Nevada; Los Angeles, California, and later in other jurisdictions, as an heir, claiming to have married Howard R. Hughes, Jr., in June 1946 and never divorced by him.

Statement of the Case

She claims marriage by Pennsylvania common law and states that she was married in a church in New Jersey, by a minister she has now located but the records are presently missing.

George F. Neff, Independent Executor of the Estate of Annette Gano Lummis, deceased, and Norton Bond, Executor of the Estate of Rush Hughes, are two interested parties who initiated the summary judgment motions in the lower court.

Summary of Facts

The court below had no jurisdiction in the proceedings due to defective service. Reasonable notice of the date of the hearing was not given and therefore was not in accordance with federal and local rules. The Petitioner was denied her rights of due process to which she is entitled to under the Constitution of the United States.

The due process clause of the Constitutional Amendment XIV has been construed as follows:

- (1) "Imposes limitations on the circumstances under which a State court may validly summon before it a person who is situated outside the state."
- (2) "Imposes requirements re giving reasonable notice."

Petitioner is at present a resident of the State of New Jersey, who had to travel a great distance to Texas several times at her own expense and time, without proper notice of a hearing date, and was disposed of summarily with inadequate evidence, without appellant's written answer (which was located much later in a drawer in the judge's

Statement of the Case

office and not properly on file before the hearing as it was in response to a hearing scheduled for April 24, 1981 and cancelled). Petitioner was disposed of without due process and by a lower court without jurisdiction.

Constitutional Amendments VII and XIV both "impose requirements concerning the giving of reasonable notice to a party against whom a proceeding is brought in a state court." (Appellant's Brief, p. 1.)

Petitioner was deprived of her fundamental rights by reason of the conduct of the summary judgment hearing by the lower Probate Court Number Two in Houston, Texas on July 13, 1981. Petitioner was deprived of her right to: consultation with her attorney; a fair and impartial trial, or hearing; protection from being a witness against herself; freedom of speech and a trial by jury. (Constitutional Amendments I, V, VI, VII and XIV.) (See appellant brief p. 57 and pp. 63-64.)

*Argument*ARGUMENT

The following are errors in the court below which are relied upon here:

(1) The court below had no jurisdiction in the proceedings due to defective service (Appellant Brief, point I). See Petitioner's motion for rehearing to the Supreme Court of Texas, pages 1 and 2, e.g., *Gulf Refining Company v. A. F. G. Management 34 Limited et al.*, 605 S.W. 2d 346 (Texas Court of Civil Appeal, 14th District, Houston, Texas, dated August 6, 1980) (reversed and remanded, rehearing denied September 10, 1980). (Also, see Petitioner's Application for Writ of Error, pages 4-6.) This very same appellate court made a favorable ruling in this case relative to "notice" and the *date* of the hearing, but did not rule in favor of the Petitioner, who did not have proper advance notice of the specific date of the hearing. Nowhere in the record is there proof of proper notice of the date of the hearing, except for the notice filed and stamped on Friday (4:14 p.m., July 10, 1981) which was insufficient notice for the hearing at 9 a.m. on Monday, July 13, 1981, which coincided with the public heirship hearings scheduled for that day. Before the court can properly take jurisdiction, the defendant must be properly served with process. Not giving sufficient notice of the date of the hearing is to be considered taking advantage of opposite counsel and defective service. (Petitioner's Application for Writ of Error, p. 5.) (Also, see Petitioner's Appellant Brief, p. 2.)

Argument

(2) The conduct of the court below, during the July 13, 1981 hearing was a violation of the Petitioner's right to due process. (See Petitioner's Motion for Rehearing, Point I and Point II, pages 1-2; and Petitioner's Application for Writ of Error, Point III, p. 4; both to the Supreme Court of Texas.) Petitioner was denied the right of access to her counsel, except for two minutes. She was not allowed to sit next to her counsel. The Court of Civil Appeals glossed over Petitioner's brief of sixteen points, denying her due process. The lower court was in confusion due to the crush of crowding.

(3) A motion for summary judgment should not be granted before an answer. (Federal Rules of Civil Procedure, Rule 56 and State rules patterned thereafter.) The Supreme Court of Texas denied the Petitioner due process in this and in other instances. The lower court should have given the Petitioner every opportunity to defend herself. A request for a continuance was not granted and the Petitioner was deprived of her rights to file opposing and important affidavits obtained with reasonable diligence just prior to the hearing. This result due to defective service is in itself sufficient grounds to grant the writ. The Supreme Court again denied the Petitioner due process by accepting the statement of the Court of Appeals in its opinion dated August 12, 1982, quoting from the Petitioner's deposition one statement out of context, while ignoring contrary statements from eight pages of the same deposition, showing partiality and depriving the Petitioner of her rights to due process and a fair hearing under the Constitution. Elaboration on the points involved are fully set forth in the record.

Argument

Background

A separate decision as to the domicile of the decedent is expected to be forthcoming from this Court next year. Presently, estate administration has been carried on under the laws of Texas and Nevada. Prior to the death of Howard R. Hughes, Jr., in 1976, there existed the Hollywood fantasy that he had no living relatives or spouse. Since then, certain heirs have been established, including "adoptees". Certain heirship agreements have been made.

Howard Hughes married and divorced Ella Rice. Jean Peters, who was called his only second wife and divorced in 1971, receives remittances under the terms of an agreement. It is no Hollywood fantasy that many rich men had more than one wife, mistress and girl friends, including some men who wrote the Constitution of the United States. Therefore, it is not a fantasy that Howard Hughes had more than one wife in the 1940's and 1950's. The claim of Terry Moore, who also has no marriage certificate, was dismissed in Texas, prior to Alyce Hovsepian's dismissal. Now, in Las Vegas, it seems that she has reached a settlement, as a wife of Howard Hughes, Jr., since 1949, although she married and divorced three other husbands during that time.

The judgments of the Supreme Court of Texas may be enforceable in Nevada and in other states in which the decedent owned property. Therefore, it is imperative for this Court to find for the Petitioner, if it concludes that she has been deprived of her rights under the Constitution.

Petitioner Alyce Hovsepian, a/k/a Alyce Hovsepian Hughes, Pro Se, petitioner and appellant below, respectfully prays that a Writ of Certiorari issue to review the

Argument

judgment of the Supreme Court of the State of Texas, which affirmed a final judgment for the Respondents and appellees below, by the Court of Civil Appeals, 14th Supreme Judicial District, Houston, Texas.

CONCLUSION

For the above reasons petitioner prays that the writ be granted.

Respectfully submitted,

ALYCE HOVSEPIAN,

A/K/A ALYCE HOVSEPIAN HUGHES,

PRO SE

34 South North Carolina Avenue

Atlantic City, New Jersey 08401

Phone: (609) 344-4405

(201) 461-2521

Opinions, Supreme Court of Texas

APPENDIX

OPINIONS BELOW

THE SUPREME COURT OF TEXAS

P.O. Box 12248 Capitol Station
Austin, Texas 78711

January 5, 1983.

Ms. Alyce Hovesepian
34 South North Carolina Avenue
Atlantic City, New Jersey 08401

Mr. Shelton Smith, Attorney
2600 Two Houston Center
Houston, Texas 77010

Mr. George Dean, Attorney
P. O. Drawer F
Destin, Florida 32541

Mr. Berry D. Bowen, Attorney
4200 Texas Commerce Tower
Houston, Texas 77002

Dear Sirs:

Today the Supreme Court overruled motion for re-hearing in the case of ALYCE HOVESPIAN vs. GEORGE NEFF, EXECUTOR ET AL., No. C-1708

Very truly yours,
(s) Garson R. Jackson
Garson R. Jackson, Clerk

2a

Opinions, Supreme Court of Texas

THE SUPREME COURT OF TEXAS

P.O. Box 12248 Capitol Station
Austin, Texas 78711

December 15, 1982.

Ms. Alyce Hoveseian
34 South North Carolina Avenue
Atlantic City, New Jersey 08401

Mr. Shelton Smith, Attorney
2600 Two Houston Center
Houston, Texas 77010

Mr. George Dean, Attorney
P. O. Drawer F
Destin, Florida 32541

Mr. Berry D. Bowen, Attorney
4200 Texas Commerce Tower
Houston, Texas 77002

Dear Sirs:

The application for writ of error in the case of
ALYCE HOVSEPIAN v. GEORGE NEFF, EXTR. ET
AL., No. C-1708 was this day refused. No reversible
error.

Very truly yours,
(s) Garson R. Jackson
Garson R. Jackson, Clerk

Mandate, Court of Appeals

COURT OF APPEALS
14TH SUPREME JUDICIAL DISTRICT

Civil Courts Building
Houston, Texas 77002

January 13, 1983

Ms. Anita Rodeheaver, County Clerk
Harris County
1010 Preston
Houston, Texas 77002

Re: A2955—Alyce Hovsepian aka Alyce Hovsepian
Hughes vs. George F. Neff, Independent Executor of
Annette Gano Lummis and Norton Bond Executor of
Rush Hughes, from Harris (Tr. Ct. No. 139, 362)

Dear Sir:

Enclosed, please find this Court's mandate in the
above cause.

Respectfully,

(s) Mary Jane Smart

Mary Jane Smart, Clerk

MJS:vt

Enclosure—w/mandate

xc: Hon. Alyce Hovsepian Hughes—w/o enclosure
aka Alyce Hovsepian
34 S. North Carolina Avenue
Atlantic City, N. J. 08401

Hon. Thomas L. Schubert—w/o enclosure
Andrews, Kurth, Campbell & Jones
2500 Exxon Bldg.
Houston, Texas 77002

4a

Mandate, Court of Appeals

Hon. Wayne Fisher—w/o enclosure
Fisher, Gallagher, Perrin & Lewis
2600 Two Houston Center
Houston, Texas 77002

Hon. Arthur Leeds—w/o enclosure
10100 Santa Monica Boulevard
Suite 2500
Los Angeles, California 90067

644-84-1903

Trial Court No. 139, 362
No. A2955

MANDATE
14th COURT OF APPEALS
HOUSTON

ALYCE HOVSEPIAN AKA ALYCE HOVSEPIAN
HUGHES, APPELLANT

vs.

GEORGE F. NEFF, INDEPENDENT EXECUTOR OF
ANNETTE GANO LUMMIS AND NORTON BOND
EXECUTOR OF RUSH HUGHES, APPELLEE

Issued January 13 1983

MARY JANE SMART, CLERK

By Mary Jane Smart

To Probate Court No. 2, Harris County

Mandate, Court of Appeals

Certified Copy Certificate

State of Texas

County of Harris

The above is a full, true, and correct photographic copy of the original record now in my lawful custody and possession, as the same is recorded in the Official Public Records of Probate Courts in my office and Preserved on Microfilm and having Microfilm Identification Number as stamped thereon, I hereby certify on

(Seal) FEB 7, 1983

ANITA RODEHEAVER

COUNTY CLERK

HARRIS COUNTY, TEXAS

By (s) Judy Sword

Deputy

JUDY SWORD

PROBATE COURT NO. 2

644-84-1902

Howard R. Hughes, Dec'd 139,362

IN THE COURT OF APPEALS

977403 FOURTEENTH SUPREME JUDICIAL
DISTRICT OF TEXAS

THE STATE OF TEXAS,

To the Probate Court No. 2 Court of Harris County,
Greeting

Before our Court of Appeals, on the 12th day of August, A.D. 1982, the cause upon appeal to revise or reverse your judgment between ALYCE HOVSEPIAN AKA

Mandate, Court of Appeals

ALYCE HOVSEPIAN HUGHES, APPELLANT vs.
GEORGE F. NEFF, INDEPENDENT EXECUTOR OF
ESTATE OF ANNETTE GANO LUMMIS AND NOR-
TON BOND EXECUTOR OF RUSH HUGHES, APPEL-
LEE

No. A2955

From Harris County

Tr. Ct. No. 139,362

Opinion by CJ—Brown

was determined; and therein our said Court of Appeals made its order in these words:

"This cause, an appeal from the judgment signed and entered August 19, 1981, came on to be heard on the transcript of the record. The same having been inspected, it is the opinion of this Court that there is no error in the judgment. It is ordered and adjudged that the judgment of the Court below be affirmed.

In addition, it is ordered that Alyce Hovsepien, appellant, and her surety, Lawyers Corporation, pay all costs incurred by reason of this appeal. It is further ordered that this decision be certified below for observance."

WHEREFORE, we command you to observe the Order of our Court of Appeals, in this behalf; and in all things to have it duly recognized, obeyed and executed.
(Seal)

WITNESS, The Hon. J. CURTISS BROWN, Chief Justice of our Said 14th Court of Appeals, with the Seal thereof annexed, at HOUSTON, this the 13th day of January A.D. 1983

MARY JANE SMART, CLERK
By (s) Mary Jane Smart

Mandate, Court of Appeals

Filed

Jan 14 2 31 PM 1983

(s) Anita Rodeheaver

County Clerk
Harris County, TexasCertified Copy Certificate
State of Texas
County of Harris

The above is a full, true, and correct photographic copy of the original record now in my lawful custody and possession, as the same is recorded in the Official Public Records of Probate Courts in my office and Preserved on Microfilm and having Microfilm Identification Number as stamped thereon, I hereby certify on

(Seal) FEB 7 1983

ANITA RODEHEAVER
COUNTY CLERK
HARRIS COUNTY, TEXASBy (s) Judy Sword
Deputy

JUDY SWORD

Opinion, Court of Appeals

COURT OF APPEALS
14th SUPREME JUDICIAL DISTRICT

Civil Courts Building
Houston, Texas 77002

October 7, 1982

Hon. Alyce Hovsepian Hughes
34 S. North Carolina Avenue
Atlantic City, New Jersey 08401

Hon. Thomas L. Schubert
Andrews, Kurth, Campbell & Jones
2500 Exxon Building
Houston, Texas 77002

Hon. Wayne Fisher
Fisher, Gallagher, Perrin & Lewis
2600 Two Houston Center
Houston, Texas 77002

Hon. Arthur Leeds
10100 Santa Monica Boulevard
Suite 2500
Los Angeles, California 90067

Re: A2955—Alyce Hovsepian a/k/a Alyce Hovsepian
Hughes, vs. George F. Neff, Independent Executor of
Annette Gano Lummis and Norton Bond Executor of
Rush Hughes, from Harris

Dear Madam and Sirs:

Please be advised that on this date in the above cause
the Court OVERRULED appellant's motion for rehearing.

Opinion, Court of Appeals

Please be advised that application for writ of error, if any, must be submitted on or before Monday, November 8, 1982.

Respectfully,

(s) Mary Jane Smart

MARY JANE SMART, CLERK

MJS: cm

COURT OF APPEALS
14TH SUPREME JUDICIAL DISTRICT
Houston, Texas

Affirmed, and Opinion filed August 12, 1982.

ALYCE HOVSEPIAN, a/k/a ALYCE HOVSEPIAN
HUGHES, Appellant
NO. A2955

VS.

GEORGE F. NEFF, INDEPENDENT EXECUTOR OF
ANNETTE GANO LUMMIS AND NORTON BOND,
EXECUTOR OF RUSH HUGHES, Appellees

Appeal from the Probate Court No. 2
of Harris County
Cause No. 139,362

This is an appeal from the granting of a motion for summary judgment in a hearing to determine the heirs of the late Howard Robard Hughes, Jr. (Hughes). The

Opinion, Court of Appeals

judgment entered denied the claim of Alyce Hovsepien, a/k/a Alyce Hovsepien Hughes (Hovsepien or appellant), that she and Hughes were married on or about June 6, 1946 in New Jersey and that their marriage was never terminated. We affirm the judgment of the trial court.

George F. Neff, Executor of the Estate of Annette Gano Lummis, deceased, filed a motion for summary judgment on March 30, 1981, claiming any such marriage was void as a matter of law. In the motion the court was asked to take judicial notice of New Jersey law. New Jersey statutes and case law were attached to the motion which showed that at the time of the alleged marriage, and at all times since, New Jersey law has required certain formalities, including the obtainment of a marriage license, for a marriage to be valid in that state. No common law or informal marriage is recognized.

A portion of Hovsepien's deposition was attached to the motion for summary judgment in order to note her testimony as follows:

I did not know anything about getting a marriage license. I never applied for a marriage license. I had no intention of getting a marriage license. I did not know anything about it.

Also attached to the motion for summary judgment were two documents from the State of New Jersey. The first was signed by Charles A. Karkut, Registrar of Vital Statistics of New Jersey. It certified that no record of the alleged marriage is present in the official records of the State. The second document was signed by the Secretary of State of New Jersey and certified that Mr. Karkut was in fact the Registrar of Vital Statistics for the State of New

Opinion, Court of Appeals

Jersey and that the signature on the first document was his.¹

On July 10, Avis Hughes McIntyre and Norton Bond, executor of the estate of Rush Hughes, filed a motion to join in the motion for summary judgment previously filed by Neff. Such motion was granted by the trial court on July 13, the day the hearing on the motion for summary judgment was held.

At the hearing the motion for summary judgment was granted as to Neff and those who joined in his motion. The record indicates no written answer to the motion for summary judgment was filed by Hovsepian. After the hearing she substituted herself as the attorney of record and has perfected appeal to this Court pro se.

Appellant first complains of the granting of leave to appellees McIntyre and Bond to join in the Neff motion for summary judgment. Tex. R. Civ. P. 166-A provides in pertinent part:

The motion for summary judgment shall state the specific grounds therefor. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing.

The Neff motion clearly complied with the rule. As to the remainder of the appellees there was no objection to the action of the trial court. We note that appellant's position toward all appellees would necessarily be the same, and thus there would be no reason to deny such a

¹ Without objection these two documents were substituted for a similar certificate from Karkut that apparently had a stamped signature.

Opinion, Court of Appeals

motion or grant a continuance based on alignment of parties. We hold that the trial court did not abuse its discretion in allowing the other appellees to join in the Neff motion, and any error was waived by appellant by not objecting to the granting of said motion. Tex. R. Civ. P. 166-A; *City of Houston v. Clear Creek Basin Authority*, 589 S.W.2d 671 (Tex. 1979); *Feller v. Southwestern Bell Telephone Co.*, 581 S.W.2d 775 (Tex. Civ. App.—Houston [14th Dist.] 1979, no writ). In fact, appellant and her counsel appeared at the hearing ready to proceed. Appellant's point of error is overruled.

Appellant also complains of the propriety of summary judgment in this instance and the sufficiency of the summary judgment evidence. Texas summary judgment procedure has been used in and is, we think, as applicable to probate and heirship matters as to any other civil litigation. See, *Mossler v. Johnson*, 565 S.W.2d 952 (Tex. Civ. App.—Houston [1st Dist.] 1978, writ ref'd n.r.e.); *Morris v. Estate of West*, 602 S.W.2d 122 (Tex. Civ. App.—Eastland 1980, writ ref'd n.r.e.); *Walker v. Hanes*, 570 S.W.2d 534 (Tex. Civ. App.—Corpus Christi 1978, writ ref'd n.r.e.). Generally, "the validity of a marriage is determined by the law of the place where it was celebrated." *Braddock v. Taylor*, 592 S.W.2d 40, 42 (Tex. Civ. App.—Beaumont 1979, writ ref'd n.r.e.). There are no considerations that have been properly presented that would make the general rule inapplicable.

We have already noted the summary judgment proof presented in support of the motion and the fact that no written answer or response was filed. We hold that appellees proved as a matter of law that any alleged marriage in New Jersey was void. This was done through state-

Opinion, Court of Appeals

ments made by appellant in her depositions, by placing before the court the law of New Jersey pursuant to Tex. R. Civ. P. 184a, and by placing before the court, pursuant to Tex. Rev. Civ. Stat. Ann. art. 3731a (Vernon Supp. 1982), documents showing that the recordation required by New Jersey law was not present. Therefore, we overrule appellant's points of error claiming that appellees did not sustain their burden of proof to show the alleged marriage was void as a matter of law and that fact issues still remain.

At the hearing on the motion for summary judgment appellant argued a new claim that she and Hughes were married under the common law of Pennsylvania. She subsequently produced an affidavit in which she claims she remembered applying for a marriage license in New Jersey. These claims were not perfected and are thus not properly before this Court. Tex. R. Civ. P. 166-A; *City of Houston v. Clear Creek Basin Authority*, *supra*.

We have reviewed appellant's remaining points of error. They complain that Tex. Rev. Civ. Stat. Ann. art. 3716 (Vernon 1926), the Dead Man's Statute, was not complied with and of such matters as deposition procedure, seating in the courtroom, inadequate time for appellant to consult with her attorney due to illness and travel, time allotted for argument, and the exclusion from evidence of exhibits presented at the hearing on the motion for summary judgment. The matters contained in these additional points of error are either not perfected and, therefore, not properly before this court pursuant to Tex. R. Civ. P. 166-A, or do not direct the attention of this Court to any action of the trial court which would be proper for review pursuant to Tex. R. Civ. P. 418 (d). Appellant's remaining points of error are overruled.

*Opinion, Court of Appeals
Judgment*

The judgment of the trial court is affirmed.

(s) J. Curtiss Brown
Chief Justice

Judgment Rendered and Opinion filed August 12,
1982.

Panel consists of Chief Justice J. Curtiss Brown, Associate Justices Junell and Price.

No Publication—Tex. R. Civ. P. 452.

A2955

ALYCE HOVSEPIAN a/k/a ALYCE HOVSEPIAN
HUGHES

VS.

GEORGE F. NEFF, INDEPENDENT EXECUTOR OF
ANNETTE GANO LUMMIS AND NORTON BOND
EXECUTOR OF RUSH HUGHES

JUDGMENT

"This cause, an appeal from the judgment signed and entered August 19, 1981, came on to be heard on the transcript of the record. The same having been inspected, it is the opinion of this Court that there is no error in the judgment. It is ordered and adjudged that the judgment of the Court below be affirmed.

In addition, it is ordered that Alyce Hovsepien, appellant, and her Surety, Lawyers Surety Corporation, pay all costs incurred by reason of this appeal. It is further ordered that this decision be certified below for observance."

Judgment, August 19, 1981

PROBATE COURT NO. 2
690-84-2008

768825

NO. 139,362
IN THE PROBATE COURT
NUMBER TWO
HARRIS COUNTY, TEXAS

ESTATE OF HOWARD ROBARD HUGHES
DECEASED

Filed
Aug 19 12 01 PM '81

(s) Anita Rodeheaver
COUNTY CLERK
HARRIS COUNTY, TEXAS

JUDGMENT

On the 13th day of July, 1981, came on to be heard the Motion of George F. Neff and of Avis Hughes McIntyre and Norton Bond for Summary Judgment Against Alyce Hovespian, a/k/a Alyce Hovespian Hughes, in the Proceedings to Declare Heirship in the above-entitled and numbered cause. It appearing to the Court that such motions were made in proper form and time, that proper service thereof had been made, that Avis Hughes McIntyre and Norton Bond obtained leave of Court to join in the

Judgment, August 19, 1981

Motion of George F. Neff, that all interested parties were properly noticed for the July 13, 1981, hearing date, and that the parties were before the Court for hearings thereon; and, after hearing arguments of counsel in open court, it further appearing that the motion is good and should be granted, the Court FINDS, ORDERS, ADJUDGES AND DECREES as follows:

1. Upon hearing argument from all interested parties and upon consideration of the pleadings, depositions, affidavits and other summary judgment evidence on file herein, it appeared to the Court (i) that the said motions for summary judgment had been made in proper form and time, (ii) that proper service and notice of hearing thereof had been made, and (iii) that the motions, the records of proceedings herein, including the pleadings, depositions, affidavits, and other summary judgment evidence and the briefs and arguments of the parties demonstrated an absence of a genuine issue of any material fact and that, as a matter of law, George F. Neff are entitled to judgment and relief against Alyce Hovespian, a/k/a Alyce Hovespian Hughes as hereinafter provided for.

690-84-2009

2. It is, accordingly, ORDERED, ADJUDGED and DECREED that the Heirship Claim of Alyce Hovespian, a/k/a Alyce Hovespian Hughes be, and the same is hereby, denied and dismissed with prejudice, and that Alyce Hovespian, a/k/a Alyce Hovespian Hughes does hereby, take nothing by virtue of her claim to be an heir at law of the decedent Howard R. Hughes, Jr.

All Court costs incurred in connection with the Heirship Claim of Alyce Hovespian, a/k/a Alyce Hovespian

Judgment, August 19, 1981

Hughes shall be paid by Alyce Hovespian, a/k/a Alyce Hovespian Hughes for which let execution issue if such costs are not seasonably paid.

Dated and this 19 of August, 1981.

RECORDER'S MEMORANDUM

All blackouts, additions and changes were present at the time the instrument was filed and recorded.

(s) Pat [Illegible]
JUDGE PRESIDING

Approved:

Andrews, Kurth, Campbell & Jones Adler & Pettit

By (s) O Clayton Lilienstern
Attorneys for
George F. Neff, Executor of
the Estate of Annette Gano Lummis,
Deceased

By (s) Jim S. Adler
Attorneys for
Alyce Hovespian, a/k/a
Alyce Hovespian Hughes

FISHER, ROCH & GALLAGHER

By (s) Wayne Fisher
Attorneys for Avis Hughes
McIntyre and Norton Bond,
Executor of the Estate of
Rush Hughes, Deceased

18a

Judgment, July 23, 1981

689-00-1312

FILED

Jul 23 4 31 PM 1981

(s) Anita Rodeheaver

COUNTY CLERK
HARRIS COUNTY, TEXAS

749986

No. 139,362

IN THE PROBATE COURT
NUMBER TWO
HARRIS COUNTY, TEXAS

ESTATE OF
HOWARD ROBARD HUGHES, JR.,
DECEASED

JUDGMENT

On the 13th day of July, 1981, in the Proceedings to Declare Heirship in the above styled and numbered cause, came on to be heard the separate trial of the issue of whether there be any surviving wife, parent, child or descendant of child, or brother or sister of the decedent, Howard R. Hughes, Jr. All interested persons were duly noticed of the July 13, 1981 trial date. Avis Hughes McIntyre and Norton Bond, Executor of the Estate of Rush Hughes, Deceased, appeared through their attorney of

Judgment, July 23, 1981

record and announced ready for trial. George F. Neff, Executor of the Estate of Annette Gano Lummis, Deceased, appeared through his attorney of record and announced ready for trial. Barbara Cameron, Agnes Roberts, and Elspeth DePould appeared through their attorney of record and announced ready for trial. Roberta Joyce Robard Hughes appeared through her attorney of record and announced ready for trial. The State of Texas appeared through its attorney of record and announced ready for trial. O. Theodore Dinkins, Jr., attorney ad litem for absent and unknown heirs, appeared and announced ready for trial.

The Court, after hearing the evidence and arguments of counsel, is of the opinion that there is no surviving wife, parent, child or descendant of child, or brother or sister of the decedent Howard R. Hughes, Jr.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED by the Court that there is no surviving wife, parent, child or descendant of child, or brother or sister of the decedent, Howard R. Hughes, Jr.

SIGNED this 23 day of July, 1981.

(s) Pat [Illegible]
JUDGE PRESIDING

Proof of Service

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

No.

ALYCE HOVSEPIAN, A/K/A ALYCE HOVSEPIAN
HUGHES, PRO SE,

Petitioner,

vs.

GEORGE F. NEFF, INDEPENDENT EXECUTOR OF
THE ESTATE OF ANNETTE GANO LUMMIS AND
NORTON BOND, EXECUTOR OF THE ESTATE OF
RUSH HUGHES,

Respondents.

PROOF OF SERVICE

Alyce Hovsepian, a/k/a Alyce Hovsepian Hughes, pro se, deposes and says that pursuant to Rule 28.3 of this Court she served the within Petition for a Writ of Certiorari to the Supreme Court of the State of Texas on counsel for the Respondents by instructing her printer (Murrelle Printing Company, Inc.) to enclose three copies each thereof in an envelope, first class postage prepaid, addressed to:

Proof of Service

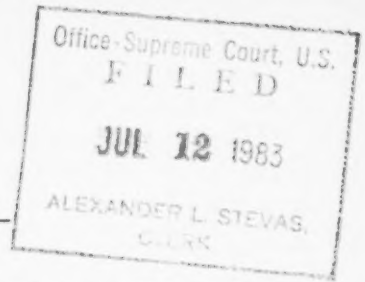
Berry Bowen, Esq.
Andrew & Kurth
4200 Texas Commerce Tower
Houston, Texas 77002

Shelton Smith, Esq.
Fisher, Gallagher, Perrin & Lewis
2600 Two Houston Center
Houston, Texas 77002

and depositing the same in the United States mails at Sayre,
Pennsylvania, on the 9th day of June, 1983.

Alyce Hovsepian

No. 82-2020



IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

ALYCE HOVSEPIAN

Petitioner,

v.

GEORGE F. NEFF, INDEPENDENT EXECUTOR OF THE
ESTATE OF ANNETTE GANO LUMMIS AND
NORTON BOND, EXECUTOR OF THE ESTATE OF RUSH HUGHES

Respondents.

On Petition for Writ of Certiorari To The
Court of Appeals for the
Fourteenth Supreme Judicial District of Texas

BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

Berry D. Bowen
ANDREWS & KURTH
4200 Texas Commerce Tower
Houston, Texas 77002
(713)220-4200
Attorneys for Respondent
George F. Neff, Executor
of the Estate
of Annette Gano Lummis,
Deceased

No. 82-2020

IN THE
SUPREME COURT OF THE UNITED STATES

October, 1982

ALYCE HOVSEPIAN

Petitioner,

v.

GEORGE F. NEFF, INDEPENDENT EXECUTOR OF
THE ESTATE OF ANNETTE GANO LUMMIS AND
NORTON BOND, EXECUTOR OF THE ESTATE OF
RUSH HUGHES

Respondents.

BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

The respondent George F. Neff, Administrator of the Estate of Annette Gano Lummis, Deceased, respectfully prays that this Court deny the Petition for Writ of Certiorari seeking review of the judgment and opinion of the Court of Appeals for the Fourteenth Supreme Judicial District of Texas entered in this action on August 12, 1982.

QUESTIONS PRESENTED

Whether the Texas Courts in this case decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

Whether the Texas Courts in this case decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

STATEMENT OF THE CASE

Alyce Hovsepien, Petitioner, resident of the state of New Jersey, filed a claim against the estate of Howard Robard Hughes, Jr., and her Entry of Appearance in Probate Court No. 2, Harris County, Texas on September 24, 1976; her second Entry of Appearance alleging a New Jersey ceremonial marriage between herself and Hughes was filed on May 1, 1980. On August 28, 1981, after the entry of judgment against her, Petitioner filed in Probate Court No. 2, Harris County, Texas, an affidavit of claim of Heirship, to the Supreme

Court of the United States, as the purported wife of Howard Robard Hughes, Jr. in which she alleged certain additional matters. These documents, certified copies of which are attached as an Appendix to this brief, constitute the entire substantive case presented by Petitioner in the Texas probate court. The federal questions now urged by Petitioner were not raised or preserved in the Texas probate court.

Reasons The Writ Should
Not Be Granted.

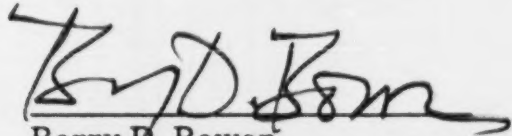
The alleged constitutional issues petitioner seeks to have reviewed were not raised in Probate Court No. 2, Harris County, Texas and not preserved for review by the Texas appellate courts. Some of the claims advanced by Petitioner have been raised for the first time on certiorari, and the state courts had no opportunity to pass on them. Failure to preserve an issue in the lower courts constitutes grounds for denying a petition for writ of certiorari or for dismissing a writ of certiorari as having been improvidently granted. The petition should therefore be denied. Monks v. New Jersey, 398 U.S.71 (1970); Street v.

New York, 394 U.S. 576 (1969); Ellis v. Dixon, 349 U.S. 458 (1955).

CONCLUSION

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in the Supreme Court of the United States, and respondents pray that the petition for Writ of Certiorari be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Berry D. Bowen", written over a horizontal line.

Berry D. Bowen
ANDREWS & KURTH
4200 Texas Commerce Tower
Houston, Texas 77002
(713) 220-4200


Attorneys for Respondent
George F. Neff, Executor
of the Estate
of Annette Gano Lummis,
Deceased

PROOF OF SERVICE

Berry D. Bowen, Andrews & Kurth, deposes and states that pursuant to Rule 28.3 of this Court he served this Brief in Opposition to Writ of Certiorari on the Petitioner by enclosing three copies of each thereof in an envelope, certified mail, return receipt requested, addressed to:

Alyce Hovsepian, Pro Se
34 South North Caroline Avenue
Atlantic City, New Jersey 08401

and depositing the same in the United States mails at Houston, Texas on the 14th day of July, 1983.


BERRY D. BOWEN

No. 82-2020

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

ALYCE HOVSEPIAN

Petitioner,

v.

GEORGE F. NEFF, INDEPENDENT EXECUTOR OF THE
ESTATE OF ANNETTE GANO LUMMIS AND
NORTON BOND, EXECUTOR OF THE ESTATE OF RUSH HUGHES

Respondents.

On Writ of Certiorari To The
Supreme Court of Texas

APPENDIX "A" TO
BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

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A

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PROBATE COURT 2

674 98 1089

#139,362

50470

IN THE OFFICE OF THE
REGISTER OF WILLS
IN AND FOR NEW CASTLE COUNTY
AND STATE OF DELAWARE

IN THE MATTER OF :
THE ESTATE OF :
HOWARD R. HUGHES, JR. :

ENTRY OF APPEARANCE AND NOTICE OF EXISTENCE OF AN HEIR

Please take notice that the firm of FLANZER & ISAACS represents Alyce Hughes, nee Hovsepian.

Please also take notice that Alyce Hughes is the wife of Howard R. Hughes, Jr., the decedent.

The address of Alyce Hughes is 34 S. North Carolina Avenue, Atlantic City, New Jersey 08104.

Please forward copies of all pleadings to the undersigned and to Alyce Hughes, 34 S. North Carolina Avenue, Atlantic City, New Jersey 08104.

FLANZER & ISAACS

Dated: August 30, 1976

By Joseph H. Flanzer
Joseph H. Flanzer

1976 SEP 24 AM 8 45

1976 SEP 24 AM 8 45

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF HARRIS

This is a full, true, and correct photographic copy of the original record now in my official custody and possession, as the same is recorded in the Official Public Records of Probate Courts in my office and preserved on microfilm, and having Microfilm Identification Number as shown above, I hereby certify on

JUN 1 6 1983



ANITA RODEHEAVER
COUNTY CLERK
HARRIS COUNTY, TEXAS

By Judy Sword
Deputy

JUDY SWORD

10

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085-95-2381

PROBATE COURT NO. 2

STATE OF TEXAS
COUNTY OF HARRIS
HONORABLE PROBATE
COURT NO. (2) TWO

DOCKET No. 139,362
ESTATE of: HOWARD ROBARD HUGHES, JR.
(Deceased)

Howard Robard Hughes, Jr., the decedent, married
ALYCE HOVSEPIAN, a resident of the State of New Jersey, in both
a civil ceremony on or about June 6, 1946, in the State of
New Jersey, and a church ceremony, thereafter. This marriage was
never terminated by divorce.

I, Alyce Hovsepien Hughes, am here in Houston, Texas, to attend
the pretrial conference on the first day of MAY 1980, per order
entered on the 21st day of March 1980, by the HONORABLE
JUDGE PAT GREGORY, a judge in the Probate Court No. 2 (Two) of
Harris County, Texas.



Jerry O. McQuillie
Notary Public

Harris County, State of Texas
My commission expires July 19, 1981.

Alyce Hovsepien Hughes
ALYCE HOVSEPIAN HUGHES
34 South North Carolina Ave.
Atlantic City, N.J. 08401
April 30, 1980.

FILED
MAY 1 1 39 PM 1980
CLERK
COUNTY CLERK
HARRIS COUNTY, TEXAS

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF HARRIS

This is a full, true, and correct photographic copy of the original record
now in my lawful custody and possession, as the same is recorded in the
Official Public Records of Probate Courts in my office and Preserved
on Microfilm, and having Microfilm Identification Number as stamped
thereon, I hereby certify on

JUN 16 1980



ANITA RODEHEAVER
COUNTY CLERK
HARRIS COUNTY, TEXAS

Judy Sword
Deputy

JUDY SWORD

✓ COPY TO: PROBATE COURT NUMBER TWO, HARRIS COUNTY, TEXAS. CAUSE #139,362
TO: THE HONORABLE JUDGES OF THE SUPREME COURT of the UNITED STATES
of AMERICA

65060

X of Mr. Alexander Stevas
Recording Clerk
Ground Floor
Building 61, 1st Ave., N.E.
Washington, D.C.

COUNTY OF SARASOTA
STATE OF FLORIDA

RE: HOWARD R. HUGHES, JR.
Decedent

690-66-1456

Dear Mr. Stevas:

Kindly file this AFFIDAVIT OF CLAIM OF HEIRSHIP in Washington, only

MAY IT PLEASE THE COURT:

Come now ALYCE HOVSEPIAN HUGHES, a.k.a. ALYCE HOVSEPIAN, WIDOW, who states, that she and HOWARD ROBERT HUGHES, JR., made ORAL AGREEMENTS of marriage, see COMMON LAW OF PENNSYLVANIA, in the CITY OF PHILADELPHIA, COMMONWEALTH OF PENNSYLVANIA June, 1946, and therefore were married under the COMMON LAW OF PENNSYLVANIA, under which a license and solemnization are not required, proof is not required, witnesses are not required, cohabitation is not required. In addition, ALYCE HOVSEPIAN HUGHES states, that she was married in NEW JERSEY in June of 1946. After a great deal of investigation, association, plus a MAY, 1946 picture of ALYCE HOVSEPIAN HUGHES with HOWARD R. HUGHES, JR., she recalls, that the FORMER Atlantic City, City Hall at Tennessee Avenue, which was destroyed in 1968, contained on the second floor both the BUREAU OF VITAL STATISTICS and the JUDGES' CHAMBERS, WITH access by climbing steps.

Therefore, ALYCE HOVSEPIAN HUGHES now states, that she remembers applying for a marriage license with HOWARD ROBERT HUGHES, JR., along with HOWARD R. HUGHES, JR.'s employee as a witness.

Further, ALYCE HOVSEPIAN HUGHES states, that she maintained her position as the WIFE of HOWARD ROBERT HUGHES, JR., for twenty-eight (28) years in GOOD FAITH.

After due consideration, the amount of this claim is hereby reduced to thirty-three and one third (33-1/3) per cent, or one-third of the net estate.

FILED

AUG 28 11 56 AM

State of Florida
County of Sarasota

Clerk of the Court
COUNTY OF
HARRIS COUNTY, TEXAS

Alyce Hovsepian Hughes
ALYCE HOVSEPIAN HUGHES
a.k.a. ALYCE HOVSEPIAN
134 S. MONROE CAROLINA AVE.
Atlantic City, N.J.
08401

Before me this day personally appeared
Alyce Hovsepian Hughes to me well known
to be the person who executed the foregoing
instrument and acknowledged that she executed said
instrument for the purposes therein expressed.

WITNESS my hand and official seal, this 22nd day of July A.D. 1981.

Sharon Dean
Notary Public
State of Florida at Large
Notary Public, State of Florida at Large
My Commission Expires April 24, 1983
Bonded by Anna Casualty & Surety Co.

COPY FOR THE ATTORNEY GENERAL

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF HARRIS

The above is a full, true, and correct photographic copy of the original record now in my lawful custody and possession, as the same is recorded in the Official Public Records of Probate Courts in my office and preserved on Microfilm, and having Microfilm Identification Number as stamped thereon, I hereby certify on

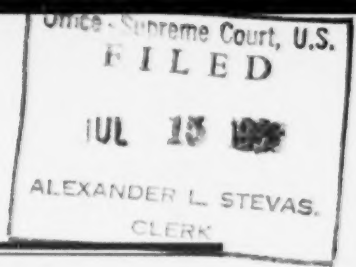
1980



ANITA ROEHEAVER
COUNTY CLERK
HARRIS COUNTY, TEXAS

Clerk

JUDY SWORD



IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

NO. 82-2020

ALYCE HOVSEPIAN,
Petitioner,

v.

GEORGE F. NEFF, INDEPENDENT EXECUTOR
OF THE ESTATE OF ANNETTE GANO LUMMIS
AND NORTON BOND, EXECUTOR OF
THE ESTATE OF RUSH HUGHES,
Respondents.

**Petition For Writ Of Certiorari To
The Supreme Court of Texas**

**BRIEF OF RESPONDENT BOND IN
OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

WAYNE FISHER
SHELTON SMITH
FISHER, GALLAGHER, PERRIN
& LEWIS
2600 Two Houston Center
Houston, Texas 77010
713-654-4433

*Attorneys for Respondent
Norton Bond, Executor of the
Estate of Rush Hughes, Deceased*

QUESTIONS PRESENTED

Whether this Court should review an alleged federal constitutional question which was not raised at trial, but raised for the first time on Writ of Certiorari to this Court, and whether the decision by the Texas Supreme Court conflicts with federal law.

II

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NO. 82-2020

IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

ALYCE HOVSEPIAN,
Petitioner,

v.

GEORGE F. NEFF, INDEPENDENT EXECUTOR
OF THE ESTATE OF ANNETTE GANO LUMMIS
AND NORTON BOND, EXECUTOR OF
THE ESTATE OF RUSH HUGHES,
Respondents.

**Petition For Writ Of Certiorari To
The Supreme Court of Texas**

**BRIEF OF RESPONDENT BOND IN
OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

To The United States Supreme Court:

Respondent, Norton Bond, Executor of the Estate of Rush Hughes, Deceased, in cause number 82-2020 before the Texas Supreme Court respectfully submits this brief in response to the Petitioner's Writ of Certiorari.

STATEMENT OF THE CASE

The facts of this case are easily confined to the hearing for the Motion for Summary Judgment heard July 13, 1981, in Probate Court No. 2, Harris County, Texas. During this hearing, which Petitioner attended, she contended through counsel that summary judgment should not be granted, for the reason that there was an issue of fact for the jury to decide. Petitioner made no objections to the alleged lack of notice for the Hearing nor any other objections to the Summary Judgment Motion. The trial court upon proper hearing and after reviewing all motions rightfully granted the Summary Judgment Motion on the basis of Texas Law.

ARGUMENT

Petitioner claims that the summary judgment order used by a Texas Trial Court, in accordance with Rule 166a of the Texas Rules of Civil Procedure, violates her constitutional right to Due Process. *See* Petitioner's Petition for a Writ of Certiorari p. 5-6. Petitioner's alleged constitutional issues were never presented at the trial court nor decided by the Texas Court of Appeals for the Fourteenth Supreme Judicial District of Texas. Thus, the Petitioner may not now, for the first time, claim that the Trial Court's action is repugnant to the federal constitution. *Charleston Federal Savings & Loan Assn. v. Alderson*, 324 U.S. 182, 185 (1945).

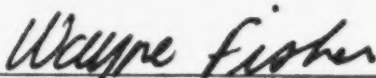
Respondent respectfully contends that Petitioner may not invoke this Court's appellate jurisdiction under 28 U.S.C. § 1257(2) when the alleged constitutional issues have not been raised or preserved in the state court. *See*

Richmond Newspapers, Inc. v. Virginia, 100 S.Ct. 2814, 2820 (1980). Furthermore, Petitioner's petition for certiorari under 28 U.S.C. § 1257(3), should not be granted when the state courts have had no opportunity to pass upon the alleged constitutional issues. *Monks v. New Jersey*, 398 U.S. 71 (1970). Petitioner's failure to present their alleged constitutional issues leaves this court without jurisdiction to consider them. *Bailey v. Anderson*, 326 U.S. 203, 206-07 (1945). Therefore, the Court should dismiss this request for certiorari. See *Carter v. Kentucky*, 450 U.S. 288 (1981); *Sandstrom v. Montana*, 442 U.S. 510 (1979).

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that the Writ of Certiorari to this Court be dismissed.

Respectfully submitted,



WAYNE FISHER
SHELTON SMITH
FISHER, GALLAGHER, PERRIN
& LEWIS
2600 Two Houston Center
Houston, Texas 77010
713-654-4433

*Attorneys for Respondent
Norton Bond, Executor of the
Estate of Rush Hughes, Deceased*

PROOF OF SERVICE

Pursuant to Rule 28.3 of this Court, attorneys for Norton Bond, Executor of the Estate of Rush Hughes serve the within Brief of Respondent Bond in Opposition to Petition for Writ of Certiorari on the Petitioner, Alyce Hovsepian, and counsel for co-respondent, George F. Neff, Independent Executor of the Estate of Annette Gano Lummis, by placing three copies each thereof in the United States mails, certified mail, return receipt requested, at the main post office building in Houston, Texas on the 13th day of July, 1983 and addressed to:

Alyce Hovsepian
34 South North Carolina Avenue
Atlantic City, New Jersey 08401

Berry Bowen
Andrews & Kurth
4200 Texas Commerce Tower
Houston, Texas 77002



SHELTON SMITH